D.B. CIVIL SPECIAL APPEAL(WRIT) NO.282/98
(Bakhtawar Singh V/s State)

DATE :-5.4.2006

HON'BLE MR. RAJESH BALIA,J
HON'BLE MR. R.P.VYAS,J.

Mr. N.K.Goyal, for the appellant.
Mr. V.N.Kalla, for the respondents.

Heard learned counsel for the parties.

This appeal is directed against the judgment of Learned Single Judge dated 20.2.98 by which the learned single judge declined to interfere at the instance of petitioner-appellant in the order passed by Board of Revenue by which the matter was remanded to the Revenue Appellate Authority for deciding the question in dispute afresh after considering the claim of the petitioner. The Board of Revenue has left it free for the petitioner to raise all the questions on merit before the Revenue Appellate Authority.

The facts of the case are that one Sh. Ramuram was holding 19 Biswas land in Murraba No. 210/398 in chak No.9 B.G.D. He was a member of Scheduled Caste, and it appears that he is original holder. By order dated

15.1.80, the land measuring 19 Biswas of which 9 Biswas of Murraba No. 210/398 and 10 Biswas in Kila No.9 of the same Murraba was alloted to Ramuram as a small patch of land. Allotment of the small patch of land to Ramuram had been challenged by Bakhtaver Singh - present appellant. It appears that in pursuance of some agreement dt. 19.1.87, the original holding of Ramuram was transferred in favour of Chimna Ram by a registered sale deed on 4.5.92. The small patch of land which was subject matter of dispute is situated adjacent to the land sold to Chimna Ram by Ramuram. It is not in dispute that allotment of small patch of land can be made in favour of persons holding the land adjacent who have prior right to that. After the adjacent land was transferred on the basis of land as small patch of land in favour of Ramuram by registered sale deed in favour of Chimna Ram, Ramuram entered into a compromise with Bakthaver Singh, in the pending appeal before the Revenue Appellate Authority that he had no objection if the small patch of land is allotted to Bakthaver Singh. Apparently, after the adjoining land held by Ramuram was transferred in third party, he had lost interest in retaining the small patch of land by himself.

Apprehending the position, Chimna Ram made an application in the pending appeal to implead Bakthaver Singh as party, bringing about this fact to the notice of the Revenue Appellate Authority that original land on the basis of which small patch of land was allotted to Ramuram has been transferred in his favour by entering into compromise. Thereafter, Bakthaver Singh & Ramuram raised dispute about his right to secure the said land. This application was rejected by order dated 25.7.92 on the ground that since the small patch of land is not a part of land sold to Chimna Ram, he cannot be said to be aggrieved with the allotment of land as person interested and, therefore, he has no locus standi. Thereafter, by the same order, the allotment made in favour of Ramuram was cancelled. However, the Revenue Appellate Authority observed that on the compromise application moved by Ramuram and Bakthaver Singh in which Ramuram has said that if the disputed land ad-measuring 19 Biswas be transferred in favour of Bakthaver Singh, he has no objection, this application could be decided by the Allotting Authority and not by the Revenue Appellate Authority. It was also observed that whether the appellant is liable to allotment as allottee or not, also be examined by Allotting authority. With these observations, the matter was remitted back to SDM. After the remand

was made the SDM, Ramgarh accepted the prayer of Ramuram for cancelling the allotment in his favour and, thereafter, the land was allotted in favour of Bakthaver Singh as per the consent given by Ramuram.

Aggrieved with these observations and the aforesaid order of allotment made in favour of Bakthaver Singh, Chimna Ram preferred an appeal before the Revenue Appellate Authority. Rejecting the appeal filed by Chimna Ram on the ground that because the Revenue Appellate Authority has earlier held that the appellant Chimnaram was not a necessary party in the appeal filed by Bakthaver Singh, he has no right to challenge the allotment made in favour of Bakthaver Singh. The Revenue Appellate Authority reasoned that since Chimna Ram was not a party before the Revenue Appellate Authority and the order has been passed on the basis of compromise after hearing the parties to the appeal, before the Revenue Appellate Authority, the appellant Chimna Ram cannot be said to the person aggrieved with it. Therefore, the appeal was dismissed.

Aggrieved with the order dated 28.8.92 and order dt. 25.7.92 the revision was preferred before the Board of Revenue in which Board of Revenue held that Chimna

Ram had sufficient interests because after the cancellation of allotment of small patch of land in favour of Ramuram, the consensus was recorded that land became a Govt. land and therefore, allotment of the said land as small patch of land could not have been made and transferred without considering the adjoining ownership of the land on the basis of so called compromise between Ramuram & Bakthaver Singh. It was held that Ramuram could not have any say in the matter of allotment to be made after allotment in his favour has been cancelled. Therefore, the revision was allowed and matter was remanded back to the SDM by setting aside the order dated 28.8.92 with a direction to consider the small patch of land in accordance with rules relating to the allotment of small patch of land by considering the claims of the respective applicants, if any. In the order of Board of Revenue, the case of Bakthaver Singh who was beneficiary of the allotment of small patch of land, as a result of consent given by Ramuram was also considered. Bakthaver Singh filed SBCWP No. 543/98 which has been dismissed subject to the aforesaid direction as noticed by us by the judgment under appeal.

Learned counsel for the appellant has strenuously urged that once the Revenue Appellate Authority has held that Chimna Ram has no interest in the land in dispute and he has not challenged the order in appeal preferred by Bakthaver Singh, he is precluded from sustaining his claim on the basis of any locus as it is barred by principle of res judicata. He also urged that there is a finding that land in dispute held by Chimna Ram is different piece of land as held by Revenue Appellate Authority in his order dated 25.7.92 which has became final. The Board of Revenue seriously erred in ignoring the finding and allowing the revision of the Chimna Ram.

Aforesaid contention in our opinion as far as appears from record cannot be sustained. As we have already noticed that the Revenue Appellate Authority has not passed any order on the basis of compromise presented before it on 25.5.92, by which Ramuram has agreed that the land may be allotted in favour of Bakthaver Singh who has challenged the allotment made in favour of Ramuram in 1980 by way of appeal. Ramu Ram by the compromise virtually accepted the claim of Bakthaver Singh. Be that as it may, the Revenue Appellate Authority has neither acted on the said compromise nor had directed the SDM to give

effect to the said compromise. The Revenue Appellate Authority has merely stated that the question of allotment of small patch of land is not within his jurisdiction to consider and it has to be considered by the Allotting Authority and therefore, he sent the compromise presented before it to the Allotting Authority concerned with direction that it should pass an order in accordance with law. Obviously, it is not a case of effecting compromise in which Bakthaver Singh has agreed to the validity of allotment in favour of Ramuram nor Ramuram has agreed to transfer the small patch of land allotted to him in favour of Bakthaver Singh. If any effect to the compromise is given then also Ramuram agreed that allotment made in his favour is cancelled and allotment of small patch of land be made in favour of Bakthaver Singh. So far as first part of the compromise was concerned, it is not out of place to mention that the only order that could have been passed by Revenue Appellate Authority was to cancel the allotment in favour of Ramuram. That order was in fact made by the SDM in his order dated 25.7.92. In the first instance, the order passed earlier was that allotment made in favour of Ramuram is cancelled. Once allotment in favour of Ramuram stood cancelled, land become available afresh for allotment and it could be allotted to Bakthaver Singh in accordance with rules and not

solely on the basis of Ramuram's desire. Since he had ceased to be owner of adjoining land whether he desired to retain small patch of land allotted to him was his concern. To whom it be allotted thereafter was not his domain to prescribe. That allotment in favour of Bakthaver Singh could be independent of any earlier allotment of land as small patch of land in favour of Ramuram, which had become available for allotment as a result of cancellation of previous allotment made in favour of Ramuram. The Board of Revenue noticed these legal consequences emerging from cancelling of allotment in favour of Ramuram that on such cancellation the land would resume to the state and, thereafter, allotment in favour of any person could have been made only as per rules of allotment of small patch and such fresh allotment cannot be made subject to the consent of Ramuram, inasmuch as on the date allotment was made in favour of Bakthaver Singh, Ramuram had no interest in any adjoining land in respect of land in question and he had no claim whatever to get that land allotted to himself or his nominee.

That being the clear position, the order passed in previous appeal before the Revenue Appellate Authority preferred by Bakthaver Singh challenging the allotment in

favour of Ramuram hardly makes any relevance, so far as the fresh allotment to be made of said small patch of land. It is clear position, and not in dispute that as on 25.7.92 when allotment was made in favour of Bakthaver Singh, Chimna Ram was holder of the adjoining land and he had a live interest to lay claim for allotment of said small patch of land to himself which was also a case when the land was originally allotted in favour of Ramuram in 1980. Chimnaram had an existing interest in the matter of allotment of small patch of land in question on 25.7.92. Apparently, the Revenue Appellate Authority has not considered this legal position but which was clearly considered by the Board of Revenue and passed the order under challenge.

Obviously, on the basis of the legal position as aforesaid, the order passed by the Board of Revenue was right that the small patch of land become available afresh for allotment as a result of cancellation of previous allotment made in favour of Ramuram in accordance with rules governing such allotment. In that event Chimnaram will also have occasion to compete for the allotment of said small patch of land situated adjacent to his land and competing claim must be decided in accordance with rules.

Accordingly, we do not find any merit in this appeal and the same is hereby dismissed.

(R.P.VYAS),J. **(RAJESH BALIA),J.**

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